Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-580

RICHARD GARCIA, ET AL,

Appellants,

vs.

UVALDE COUNTY, ET AL

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT

COURT FOR THE WESTERN DISTRICT

OF TEXAS

JURISDICTIONAL STATEMENT

Paul D. Rich
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO.

RICHARD GARCIA, RAMON VELASQUEZ and OLGA RODRIGUEZ, Individually and on Behalf of All Others Similarly situated,

Appellants,

vs.

UVALDE COUNTY, A Political Sub-Division organized under the laws of the State of Texas, LEO DARLEY, Individually and in His Official Capacity as Uvalde County Judge, Y.O. COLEMAN, GILBERT TORRES, GEORGE MOORE and CLAYTON DISMUKES, Individually and in Their Official Capacities as County Commissioners of Uvalde County, Texas; EILEEN CARLISLE, Individually and in Her Official Capacity as Uvalde County Texas County Clerk; KENNETH KELLEY, Individually and in His Official Capacity as Sheriff of Uvalde County, Texas; and WILLIAM A. KESSLER, Individually and in His Official Capacity as Democratic Party Chairman,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellants, Richard Garcia, Ramon Velasquez, and Olga Rodriguez file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the Judgment and Orders entered by the Three Judge Court of United States District Court for the Western District of Texas in this case and should exercise such jurisdiction.

OPINION BELOW

The opinion of the lower court is incorporated by reference herein for all purposes and is attached as Appendices C and D to this jurisdictional statement.

GROUNDS OF JURISDICTION OF

SUPREME COURT

This appeal arises from an action by appellants on or about October 18, 1976 seeking a declaration that the defendants and its county officials had failed to secure the approval of the Attorney General for their 1973 reapportionment, and for injunctive relief preventing the continued implementation of that reapportionment plan. The judgment of the United States District Court was entered on April 27, 1978, in the United States District Court for the Western District of Texas. The jurisdiction of this Court is invoked under the specific provisions of Title 42, United States Code, Section 1973c and 28 United States Code Section 1253.

QUESTIONS PRESENTED

1. Whether the Attorney General has the authority under the Voting Rights Act and related regulations to extend the statutory 60 day period for evaluating a reapportionment plan submission more than once, where the submitting authority creates the need for further extensions by failing to submit census information which it admittedly has in its possession?

2. Whether the Court below exceeded its authority by reviewing the circumstances in which the objection letter was issued in order to determine whether or not it was

valid and timely?

STATEMENT OF FACTS

This is an action seeking to enforce the application of the Voting Rights Act of 1965, as amended, 42 USC 1973c to Uvalde County, Texas. Any change in voting enacted or administered after November 1, 1972 in Uvalde County, Texas is subject to Section 5 of the Voting Rights Act of 1965, as amended. The Uvalde County Commissioners on August 13, 1973 reapportioned the Commissioners Court Precincts by which members to the Uvalde County Commissioners Court are elected. This August 13, 1973 reapportionment constitutes a voter qualification, prerequisite to vote, standard, practice or procedure with respect to voting different from those in effect on November 1, 1972. By a letter dated March 18, 1976 the Attorney General notified Uvalde County Judge Darley that Uvalde County's 1973 reapportionment of the Commissioners precincts required preclearance under section 5 of the Act, as amended, requiring submission of any and all post November 1, 1972 election changes. Defendants made an initial

submission by letter dated March 22, 1976, to the Department of Justice for a determination that the election change did not have a discriminatory purpose or effect. This submission was incomplete because it did not contain the population data required by 28 CFR 51.10(b)(5)(6). The initial submission, however, did mention that the redistricting committee had used some population data in formulating the 1973 reapportionment plan. On May 19 and July 30, 1976, the Department of Justice requested additional information from Uvalde County pursuant to 28 CFR 51.18 (a). Each additional submission was also incomplete because it lacked the population data mentioned above. By August 14, 1976 the Department of Justice was convinced that they were not going to receive either the population statistics required by 28 CFR 51.10 (b)(5)(iv)6(i) or the population data alluded to in the initial submission. Such information is necessary in order for the Attorney General to make a reasoned judgment whether or not to object. On October 13, 1976 the Attorney General in accordance with 28 CFR 51.10 objected to Uvalde County's

1973 reapportionment plan.

Plaintiffs filed a class action lawsuit in the United States District Court Western District of Texas, under 42 USC Section 1973 (c)(j) and a Motion For Temporary Restraining Order against defendants on October 18, 1976 seeking to restrain Uvalde County from conducting elections under an invalid reapportionment scheme for the Uvalde County Commissioners Court, which was denied on November 1, 1976. On November 2, 1976 without preclearance from the Attorney General, Uvalde County conducted elections for Commissioners Precincts one and three. On November 3, 1976 appellants filed an Application for a Stay pursuant to Rule 8 of the Federal Rules of Appellate Procedure in the United States Court of Appeals for the Fifth Circuit. On November 4, 1976 the Honorable Thomas Gee entered a Stay preventing the Uvalde County Commissioners Court from opening the returns and canvassing the results of the November 2, 1976, general election for the position of County Commissioners in Precincts 1 and 3. This Stay took effect pending a decision by the emergency

panel of the United States Court of Appeals for the Fifth Circuit. On November 11, 1976, an order was entered by the Emergency Panel continuing Temporary Injunctive relief pending an opportunity to pass on the matters presented in the application for Stay pursuant to 28 USC Section 2284 (b)(3). Shortly thereafter defendants filed a Plea in Abatement alleging that this Honorable Court had jurisdiction over Briscoe v. Levi, 535 F 2d 1259(1976) and that this case would be resolved in favor of the State of Texas, thus making the pending litigation moot. A hearing was held before the Three Judge Court on December 24, 1976. An order granting the Plea in Abatement was then entered and a hearing on the merits was not held until April 11, 1978.

On November 18, 1976 a Motion to Intervene, filed by the United States Department of Justice, was granted by the District Court. On April 20, 1978 a Memorandum, Opinion and Order, with a dissenting opinion, was entered finding for defendants. On April 27, Judgment was entered against Plaintiffs denying all relief sought by Plaintiffs and Plaintiff-Intervenor and dissolving the

injunctive order heretofore in effect. Chief Judge for the United States District Court, Western District of Texas Adrain Spears, respectfully dissented.

This April 27, 1978, order by the Three Judge Court, legally reinstated the Uvalde County elections. On May 5, 1978 Plaintiffs and Plaintiff-Intervenor United States of America, filed a Motion to Reconsider and Amended Judgment before the District Court relating to its April 20, 1978 Memorandum Opinion and its April 27, 1978 Judgment, which were denied on June 19, 1978. This denial rendered the Uvalde County Reapportionment plan legally enforceable without the preclearance approval of the Attorney General. Private Plaintiffs are requesting this Court to require the Uvalde County Commissioners Court to establish a reapportionment plan which is not discriminatory in purpose or effect pursuant to 42 USC §1973c, and that new primary and general election schedules be established based on a precleared reapportionment plan.

Private Plaintiffs filed their Notice of Appeal On June 22, 1978. Plaintiff Intervenor United States

of American is not a party to this Notice of Appeal and Jurisdictional Statement. Plaintiffs herein expect Plaintiff Intervenor to shortly file a separate Notice of Appeal and Jurisdictional Statement.

FEDERAL QUESTION IS SUBSTANTIAL

This action arises under the Voting Rights Act of 1965, as amended, 42 USC 1973c and concerns the right to vote of Mexican Americans in Uvalde County, Texas. In this respect, the present case involves a Substantial Federal Question.

The congressional purpose of the Voting Rights Act 42 USC 1973c, as amended, was to ensure that no citizen be denied the right to vote on account of race, color, or language, Allen v. Board of Education 393 US 544 89 S.Ct. 817 (1969). In South Carolina v. Katzenbach, 383 US 301 86 S.Ct. 803 (1966) in holding the constitutionality of the Act, this Court noted that "The Voting Rights Act was designed to banish the blight of racial discrimination which has infected our country for nearly a century, "Katzenbach, p. 807. The Court also noted that such stringent and remedial legislation was

necessary in order that this fundamental right not be abridged on account of race, color or language because "Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of the country through unremiting and ingenious defiance of the Constitution. 383 US at 808.

Although the original act was aimed at guaranteeing that citizens not be denied the right to vote on the basis of race or color, in its 1975 Amendments to the Act, Congress, in order to ensure that his constitutionally guaranteed right to vote should also not be abridged on account of language, expanded the original definition of test or device "prohibited" by the Act, to include elections conducted in English to cover jurisdictions where a substantial portion of the population speaks a foreign language. 42 USC 1973c.

In September of 1975, the Director of the Census Bureau and the Attorney General determined that in accordance with the provisions of 42 USC §4(b) as amended 42 USC 1973b(b), Texas was subject to the Act's provisions because less than 50% of the eligible voters

of Mexican descent had voted in the 1972 Presidential election and because Texas had maintained a test or device, i.e., only English election materials were used on November 1, 1972. This determination was upheld by this Honorable Court in Briscoe v. Levi, 97 S.Ct. 2528 (1977).

Congress, in extending the protections afforded by the Voting Rights Act of 1965, as amended, to language minorities, realized that these minorities have traditionally been denied the right to vote by virtue of the fact that their dominant language is one other than English and that in order to ensure that no citizen's right to vote be denied on the basis of language, coverage of the Voting Rights Act should be extended to this group. Toward this end, the onus of assuring that a change in "voting procedure of device" does not have the purpose or effect of abridging or denying the right to vote on the basis of language, as well as race or color, is properly placed on the jurisdiction proposing the change, not on the adversely affected citizens. Judgement for the defendants in the present case can only

serve to subvert this fundamental Congressional intent because defendant Uvalde County failed to carry its burden of proving that the submitted changes did not have the discriminatory purpose or effect of denying or abridging the right to vote of the Mexican populace in Uvalde County. The defendant Uvalde County failed to submit the population data required in reapportionment cases by 28 CFR 51.10 (b)(5)(iv)(v). This information is crucial in order for the Attorney General to make a reasoned determination whether or not to object to the submitted plan.

Although the majority on the Three Judge Court declared they could review the circumstances under which the objection letter was issued in order to determine whether or not it was valid and timely, this proposition of law is not free from doubt. See Morris v. Gressette 432 US 491, 501 97 S.Ct. 2411 (1977) and Georgia v . Unites States, 411 US 526, 93 S.Ct. 1702 (1973).

The nature of the §5 remedy requiring preclearance of any voting changes through the Attorney General has been characterized by this Court as a unusual and severe

procedure, which strongly suggests that Congress did not intend that the Attorney General's actions under that provision be subject to judicial review. Morris v. Gresseetee 432 US 491, 501 97 S.Ct. 2411. This procedure is unusual and perhaps unique, but the judgment which the Attorney General must effectuate to execute the Congressional intent of the Voting Rights Act is complex and difficult and no one would argue that it should be made with inadequate information. Georgia v. U.S. 411 US 526 93 S.Ct. 1702 (1973) p. 1711 footnote 13. The power of the Attorney General to promulgate regulations like 28 C.F.R. §51.18, suspending commencement of the time period until a submission is complete was upheld in Georgia v. U.S. 411 526 93 S.Ct. 1702 (1973). This Court evidently recognized the complexities inherent in evaluating reapportionment schemes, and thus delegated the Attorney General the power to request any information which in his judgment is imperative to a 28 C.F.R. §51.10 just and intelligent determination. The process, however is not simple, and cooperation from the submitting authority is essential. In the present case

the defendants' bad faith and failure to cooperate is exemplified by the March 22, 1976 initial submission letter which states that the redistricting committee employed census reports, spot maps, and voter registration data in formulating the reapportionment plan. (Appendix attached). The March 22, 1976 submission was incomplete according to the standards of 28 C.F.R. §51.10 and the Attorney General requested total population statistics required by 28 C.F.R. 51.18, in order to capably evaluate the plan for racially discriminatory purpose or effect. The regulations promulgated by the Attorney General in 28 C.F.R. §51.10 (b) (5) and (6) emphasize the value of population statistics in evaluation of changes due to voting practices or procedures which involved redistricting. The May 28, 1976 response of the Uvalde County Judge asserted that the total population statistics by race were unavailable, which totally contradicted his March 22, 1976 letter which stated that a census report had been utilized formulating the plan. Because the Attorney General

could not evaluate the plan without the total population statistics, and because its initial response indicated that Uvalde County possessed a census report, the Attorney General in a good faith effort to approve the reapportionment scheme again requested the total population figures on July 30, 1976. In Georgia v. U.S. 411 U.S. 526, 93 S.Ct. 1702 (1973) footnote 13 p. 541 the Court said:

> in evaulating a situation such as this, the good faith of the Attorney General and his delegates must be presumed, and inasmuch as the defendants are affirmatively attacking the administration of the Attorney General's procedure, it would appear that it is incumbent upon them to show "unwarranted administration conduct" resulting in "frivolous and repeated delays by the Justice Department.

In Plaintiff Intervenors Memorandum In Support of Motion For Reconsideration filed by the United States of America requesting that the Three Judge Court review its April 27, 1978 judgment, the affidavit of Mr. Gerald Jones, Attorney for the Justice Department states that in reviewing submissions of almost 15,000 voting

changes since January 1, 1976, the Attorney General has requested additional information on only 404 ocassions. As might be expected, the submissions which result in more than one request for additional information are generally complex voting changes. The Attorney General's policy of allowing covered jurisdictions a full opportunity to sustain their burden of proof, even after the initial request for information does not supply information to establish the non-discriminatory effect of voting changes, has benefitted covered jurisdictions. For example, in twenty two of forty five submissions where more than one additional information request was made, the Attorney General granted Section 5 preclearance. (Appendix G attached).

The August 12, 1976 response by the Uvalde County Judge again asserted that total population figures were unavailable, directly controverting the County's initial submission which suggested that a census report was utilized in formulating the reapportionlment plan. Therefore, the Attorney General, convinced that the defendants would not submit the population statistics re-

ferred to in the March 22, 1976 offering, declared the submission complete. Such a decision must be made by the Attorney General, and not by the submitting authority nor the Courts. In this respect, Uvalde County's refusal to submit total population statistics implies that the submitting authority has the authority to make the determination for the Attorney General regarding what data is required to make an evaluation. The Attorney General was delegated the power to evaluate reapportionment plans and for the submitting authority to usurp this authority is inconceivable, particularly here, where the Uvalde County has ostensibly acted in bad faith.

If this Court determines that Uvalde County tendered a complete submission in its May 28, and August 12 replies, although essential population statistics were witheld in violation of 28 C.F.R. 51.10 (b) (5) and (6), a result contrary to the Georgia, 411 US 526, 93 S.Ct. 1702 holding will be reached.

If an incomplete offering was submitted, and this

Court determines that the Attorney General is without authority to suspend the 60 day period, the only alternative the Attorney General has is to object to the plan, and thereby add acrimony to the administration of §5 of the Voting Rights Act, as amended 1973c a result in direct conflict with Georgia v. United States, 411 U.S. 526 93 S.Ct. 1702 (1973).

Rather than add acrimony to the administration of §5 of the Voting Rights Act, as amended 1973c this Court can streamline the submission process by allowing the Attorney General sound discretion to suspend the 60 day period until the vital data consistent with 28 C.F.R. §51.10 (b) (5) and (6) is submitted to evaluate the reapportionment plan. This latter approach is certainly more consistent with the holding of this Court in the Georgia case and with the intent of Congress in passing the Voting Rights Act, as amended 1973c. In evaluating a situation such as this the good faith of the Attorney General and his assistants must be presumed. Inasmuch as the defendants are attacking the implementation of the

Attorney General's preclearance regulations it would appear that it is incumbent upon them to show an "unwarranted administration conduct" resulting in "frivolous and repeated delays by the Justice Department. Georgia v. U.S. 411 U.S. 526 footnote 13 p. 541.

In 28 C.F.R. §51.19 the Attorney General has set forth the standards to be employed deciding whether or not to object to a submission. The burden of proof is on the submitting authority and the Attorney General will refrain from objecting only if his review of the material satisfies the requirement that the proposed change will not have racially discriminatory purpose or effect. In the present case Uvalde County not only failed to provide the Attorney General with sufficient data to uphold its burden of proof, but also failed to provide the Attorney General with sufficient data to evaluate the submission for a racial discriminatory purpose or effect. Thus it was incumbent on the Attorney General to object in the absence of a basis for such a decision.

Assuming arguendo that giving unfettered discretion

to the Attorney General in suspending the 60 day period will add acrimony in administering the Voting Rights Act, as amended 1973c submitting authorities are not restricted to preclear the plan with the Justice Department. 28 C.F.R. 51.1 gives the submitting authority the choice of preclearing the plan with the Attorney General or obtaining a Declaratory Judgment from the United States District Court for the District of Columbia. However, since Uvalde County chose to preclear the reapportionment plan with the Attorney General it must abide by the rules promulgated by the Attorney General, particularly 28 C.F.R. §51.18 and 51.10 (b) (5) and (6) which have been upheld in Georgia as wholly reasonable and consistent with the Voting Rights Act.

CONCLUSION

For the reasons stated above and the attached appendices, appellants submit that this appeal brings substantial and important federal questions before the Court. Appellants urge the Court that a Summary Reversal be granted. In the alternative, appellants request that plenary consideration be given to the important

federal questions, with briefs on the merits oral arguments for their resolution. Appellants would further ask for an injunction enjoining the conduct of the November, 1978 general elections as to the commissioners Court races pending resolution of the appellate process.

Dated August 21, 1978.

Respectfully submitted,

Paul D. Rich
WinterGarden Project
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PROOF OF SERVICE

I, Paul D. Rich, a member of the Bar of the Supreme Court of the United States and counsel of record for Richard Garcia, Ramon Velasquez, and Olga Rodriguez, appellants herein, hereby certify that on August 21, 1978 pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Jurisdictional Statement on each of the parties herein as follows:

On Uvalde County, Leo Darley, Y.O. Coleman, George Moore, Clayton Dismukes, Eileen Carlisle, Kenneth Kelly, William A. Kessler, appellees herein, by depositing such copies in the United States Post Office, Crystal City, Texas, with first class postage prepaid, by serving Emmett Harris at First State Bank Building, Uvalde, Texas 78801, on Defendant Intervenors Foley and Ilse, by serving Lloyd Lochridge, 5th Floor, Texas State Bank Building, Austin, Texas 78701, on Realigned Party Gilbert Torres by serving Rogelio Munoz at 231 S. Getty Street, P.O. Box 1434, Uvalde, Texas

78801, on Plaintiff Intervenor United States of America by serving the Solicitor General at Department of Justice 20530.

All parties required to be served have been served.

Dated August 21, 1978.

Paul D. Rich
P.O. Drawer 707
Crystal City, Texas 78839

APPENDIX A

March 22, 1976

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20503

Dear Mr. Pottinger:

This is in reply of your letter of March 18th in regard to redistricting of the Uvalde County Commissioners precincts.

Uvalde County was probably the most unbalanced County in the United States insofar as voters were concerned in each Commissioners precinct before we redistricted. One of our precincts had probably less than 300 people, another one had 400 people, another one had possibly 600 people and the remaining one 3,000. This was due to the fact that the City of Uvalde has been far the largest populated. We had been called upon by several people interested in civil rights to redistrict our precincts. I discussed this in detail several times with Mr. Jesse Gamez, an attorney in San Antonio, Texas who was connected with the la Raza Party in Texas and with the Mexican American legal Defense and Education Fund in San Antonio.

This was first brought to the Commissioners Court attention in 1969 whereafter a full discussion a motion was made, by the Commissioner having the fewest number of people in his district, that the County be redistricted according to the Supreme Court case of one man one vote rule. The Court proceded to appoint a twelve member committee of people from all parts of the County, including Mexican-Americans and Anglos, to study this problem and made a recommendation as to how the precincts should be changed. This Committee worked long and hard and came up with a plan which they recommended. Whereupon the Commissioners Court called a public hearing on the plan and everyone was pleased except one person. Mr. Gilbert Torres appeared at such meeting and objected to the plan because the only thing the committee

had used was the voter list. He claimed we should have used the census report. It was explained to him that we had nothing like a new census report and that the old one was probably useless and the committee had done the best they could. Mr. Torres claimed that he represented a certain group of Latin Americans and if this plan was carried through they would file suit. Whereupon the Court voted unanimously not to redistrict at all.

Again in 1973, after the new census report was out, the Court again voted unanimously to redistrict and appointed practically the same committee to draw up the details of this redistricting. At this time they used the voter list, the census report, a spot map kept by the City of Uvalde showing the density of utilities users and all other information they could receive. Upon completion of their work they advised the Commissioners Court and another public meeting was called by the Court for July 10, 1973. I am enclosing herewith a copy from the Uvalde Leader News giving this information. To make this completely legal under the law the Court reaffirmed their action at their Regular meeting in August that year. All four County Commissioners voted in favor of the plan. The Commissioners were W.T. Shurley, Commissioner Precinct #1, Austin Schaefer, Commissioner Precinct #2, George Moore, Commissioner Precinct #3 and Virgil Sutherland, Commissioner Precinct #4. All of this action was taken by unanimously vote of the Court.

Mr. Jesse Gamez and a number of Mexican-American people he represented appeared at the above public hearing. Upon completion of the report and the adoption of it by the Court Mr. Gamez arose and made the public statement that he felt that this was the fairest redistricting plan he had ever known and he wanted to congratulate the members of the committee and the Commissioners Court for their action.

The committee who recommended the division of the County into Commissioners precincts did not number the precincts but simply referred to them as A,B,C, and D.

Under our Texas law two of our Commissioners have to run each two years and I pointed out to the Court unless we numbered the precinct containing the majority of the Mexican-Americans as either precinct 2 or 4 that these people would be denied a commissioner for at least 4 more years, as these were the Commissioners that had to run next. The Court agreed that this was right and that this precinct should be so numbered. The two Commissioners, Mr. Austin Schaefer and Mr. Virgil Sutherland, immediately began an argument as to which one of their precinct number should be given to this new precinct. They, of course, would not be able to be elected in this precinct over a Mexican American citizen. They could not settle this argument. Mr. Kessler who had headed the redistricting committee happened to come into the Courtroom and we ask him to suggest some method. He immediately stated that in his opinion the two commissioners should draw lots as to the number of their precinct. This was done and Mr. Austin Schaefer lost and his precinct #2 was designated for this precinct.

Although Mr. Schaefer consistently voted for this redistricting at every step of the way and was enthusiastic over the way it was being done, however, after he lost on the numbering of the precincts and saw that he could not be elected he immediately started a campaign of opposition to the entire plan. He had some twelve people who were his ardent supporters from Sabinal before the Court on two occassions and on the last occassion was represented by an attorney, Mr. James R. Gillespie. I am attaching a letter hereto dated February 27, 1974 which I sent to Mr. Gillespie in regard to the matter and a copy of his letter of March 8, 1974 in reply thereto. At the last meeting Mr. Gillespie appeared together with these some twelve people all Mr. Schaefer's supporters together with a Court reporter and had a long hearing after which the Court refused to change their minds in favor of Mr. Schaefer.

On March 14, 1974 Mr. Austin Schaefer again made a motion to redo the Commissioners precincts and which motion failed to receive a second. I am enclosing herewith a copy of an article of March 14, 1974 from the Uvalde Leader News showing this action.

I immediately became sure that a suit would probably be filed on this matter by Mr. Schaefer, or some of his supporters. One of his supporters, Mr. Eddie Kirkham, who lives here in Uvalde was very out spoken about the matter. On March 15, 1974 I wrote Mr. Jesse Gamez, the Attorney who represented the La Raza party and sent a copy to Mexican-American Legal Defense and Education Fund advising them of these facts and asking them for possible help in case a suit was filed. I received Mr. Gamez's reply dated May 28, 1974. A copy of both of these letters are attached.

We received a letter on January 23, 1973 from Mr. C.M. Miles, United States Director on Civil Rights, and I replied to his letter on January 24, 1973, copies of both of these letters being attached hereto.

We are very proud of the fact that our redistricting effort came easily within the guide lines set by the Supreme Court. I am enclosing herewith a copy of a letter of May 8, 1974 from the Uvalde County Democratic Executive Committee showing the number of votes cast and the Commissioners precincts involved. I am also enclosing herewith the votes cast in the General Election November 5, 1974 by Commissioners precincts.

I am sure that you have probably received letters of complaints from some person or persons regarding this. I am sure that it all stemmed from the fact that Mr. Schaefer was forced out of office by reason of these. He is now a resident of precinct #3 and is running against Mr. George Moore, the present incumbent but so far as I can tell has very little chance of winning.

We are very proud of the way we created these election precincts in order to give everyone a chance to elect a Commissioner. We could have redistricted

by having every precinct run into the City of Uvalde. In case we had done this no Mexican-American could ever been elected County Commissioner. We have a very fine population of Mexican-American people here and a vast majority are of the highest character. The only trouble is that they will vote for an Anglo just as quick as they will one of their own people. Commissioners precinct #4 has now become almost half and half and precinct #1 has a very large population of Mexican-American people. We do not have over 20 adult colored people living here.

You will notice from the above we had no trouble whatever with the Mexican-American minority interest in this redistricting as they were perfectly satisfied. The trouble we had was with one of our Anglo Commissioners who lost his job of the re-numbering of the precincts.

I am sorry that I am making this letter so long but I just wanted you to understand some of the facts and differences that we have had and again I want to say that we think we have done everything possible in this matter to make sure a compliance with the law and the Supreme Court.

As you know Texas was just recently including under the Voting Rights Act. We have held one Commissioners Court election after redistricting and before the Voting Rights Act went into effect without any trouble whatever. We certainly do want the Attorney General's Office to settle this matter and do not want to file a suit in the U.S. District Court of the District of Columbia.

Sincerely yours,

Leo Darley
Uvalde County Judge

LD/mbt
Enc.

APPENDIX B

Honorable Leo Darley
County Judge
County Courthouse
Uvalde, Texas 78801

Dear Judge Darley:

This is in reference to the reapportionment of Commissioner's Court Precincts in Uvalde County, Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 14, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interest parties. Our review and analysis shows that, according to the 1970 Census, Uvalde County is 50.7% Mexican-American, 47.5% Anglo and 1.8% Black. Information available to us indicates that Commissioner Precinct 2 under the redistricting plan has an overwhelming concentration of Mexican-Americans, and in addition exceeds the norm of an ideal (population) district by a percentage of at least 11%. The other precincts, two of which are substantially underrepresented, apparently have deviations of similar scope resulting in a total deviation range in excess of 20%. Thus, it would appear that the precinct with the highest percentage of Mexican-Americans is the most underrepresented while at least two of the remaining recincts, each with evident Anglo population majorities, show deviations indicating overrepresentation.

We note that the reapportionment is based on registered voter statistics. Our experience indicates that Mexican-Americans generally have a lower rate of voter registration than do Anglos. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of Mexican-Americans. See Ely v. Klahr, 403 U.S. 108, 118-19 (1971) (Douglas, J., concurring). Our analysis further shows that there is evidence that Mexican-Americans have not been afforded access to the political process in Uvalde County. When these considerations are noted, together with the configuration of the plan, particularly with the elongated hour-glass shape of precinct 1 which is developed with

the Mexican-American population in the minority, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the Mexican-Americans citizens of Uvalde County.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., White v. Regester, 412 U.S. 755 (1973); Robinson v. Commissioner's Court, Anderson County, 505 F 2d 674 (1974), I must, on behalf of the Attorney General, interpose an objection to the 1973 redistricting of Uvalde County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the redistricting plan does not have the purpose and will not have the effect of denying or abridging the right to vote to members of a language minority group in the County. However, until and unless such a judgment is obtained, the 1973 Uvalde redistricting plan is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

RICHARD GARCIA, ET AL,	§	
	§	
PLAINTIFFS	§	
	§	
and	§	
	§	
UNITED STATES OF AMERICA,	§	
PLAINTIFF-INTERVENOR	§	
	§	
VS.	§	CIVIL ACTION NO.
	§	DR-76-CA-24
UVALDE COUNTY, ET AL,	§	
	§	
DEFENDANTS	§	
	§	
and	§	
	§	
NORMENT FOLEY AND GENE ILSE,	§	
	§	
DEFENDANT-INTERVENORS	§	

MEMORANDUM OPINION AND ORDER

This is a Voting Rights Act case involving the 1973 reapportionment of Uvalde County, Texas' Commissioners Court Precincts. Private Plaintiffs brought this action on or about October 18, 1976 seeking a declaration that the Defendant County Officials had failed to secure the approval of the Attorney General or the District Court for the District of Columbia for their 1973 reapportionment and for injunctive relief preventing the continued implementation of that reapportionment plan. A single judge of this Court denied the Plaintiffs' request for an order enjoining the election of the Commissioners but, following the election, the Defendant County Officials were ordered not to canvass and certify the results of the election. Thus the two individuals who were unopposed and therefore presumably elected in the November, 1976 election for County Commissioners have not taken office and the two Commissioners sitting prior to the November election have held over in office.

The United States has intervened in this action as a Plaintiff. The two persons elected in the November, 1976 election for County Commissioners but not allowed to take office have intervened on the side of Defendants.

On April 11, 1978, trial on the merits was had before this Court at which time all parties presented testimony, evidence and argument. Having now heard and considered same, the Court enters this Memorandum Opinion and Order constituting its findings of fact and conclusions of law.

Uvalde County reapportioned its Commissioners Court precincts after November 1, 1972. That reapportionment was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C §1973c. Private Plaintiffs and the United States contend that we need only note that the Attorney General has entered an objection to the reapportionment and on that basis grant them the de-

claratory and injunctive relief they seek. Given the facts surrounding the issuance of the objection letter in this case, the issue is not as simple as Plaintiffs would have it. Coming to Court "armed" with an objection letter does not necessarily entitle Plaintiffs to the relief they seek. Morris vs. Gressett, _____ U.S _____, 97 S.Ct. 2411 (1977). This Court can review the circumstances in which the objection letter was issued in order to determine whether it was validly and timely issued. Morris vs. Gressette, supra; Georgia vs. United States, 411 U.S. 526, 93 S.Ct. 1702 (1973). An extensive review of the facts is appropriate.

In August of 1973, the Commissioners Court of Uvalde County gave final approval of a plan to change the boundaries of the four precincts from which its members are elected.[1/] Prior to that change the County

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1/ This 1973 boundary change will be referred to as the "plan" or the "1973 reapportionment".

was seriously malapportioned. In Texas, two commissioners are elected every two years for four year terms and in November, 1974, the two Commissioners elected in Uvalde County were elected pursuant to the 1973 reapportionment scheme.[2/]

In September, 1975, Texas was for the first time brought within the coverage of the Voting Rights Act, 42 U.S.C. §1973, et seq. See Briscoe vs. Bell, _____ U.S._____, 97 S.Ct. 2428 (1977). According to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, a local political subdivision or state that is covered by the Act may not enforce a post-November 1, 1972 change affecting voting until the change is approved by the District Court in the District of Columbia or is not objected to by the Attorney General after its submission to him. It is conceded by all parties that the reapportionment here was the kind of change affecting voting that requires Section 5 approval.

2/ One of those Commissioners, Mr. Gilbert Torres, was originally a Party Defendant in this cause but, upon his own motion, was realigned as a Party Plaintiff.

Rather than bring suit in the District of Columbia, Uvalde County chose to submit its 1973 reapportionment to the Attorney General for his determination of whether the reapportionment had the purpose or effect of discriminating on the basis of race or language status. See 42 U.S.C. §1973c; Beer vs. United States, _____U.S._____, 96 S.Ct. 1357 (1976); City of Richmond vs. United States, 422 U.S. 358, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975).

On March 22, 1976, Uvalde County commenced what was to become an almost seven month submission process. On that date, the County Judge submitted the 1973 reapportionment to the Attorney General's Civil Rights Division.[3/] Along with his letter explaining the reasons for, the circumstances surrounding and the results of the 1973 reapportionment, the County Judge sent newspaper clippings describing the changes in precinct boundaries, copies of letters to and from various per-

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3/ The submission was received in the Attorney General's office on March 25, 1976.

sons interested in the reapportionment and voting statistics illustrating the effects of the changes.[4/]

None of the parties seriously contend that this March submission ("initial submission") did not provide at least some of the items that the regulations state each submission"shall" include. 28 C.F.R. §51.10(a)(1)(5). However, the regulations also require a submission to include "other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change." 28 C.F.R. §51.10(a)(6).

Some 58 days later, on May 19, 1976, a letter was sent from the Attorney General's office to the County Judge advising him that the initial submission had been received but that more information was needed in order to evaluate the submission. The County Judge was further advised that the sixty day period allowed

4/ See the dates and exhibits referred to in the Stipulated facts section of the Pre-Trial Order.

the Attorney General by Section 5 of the Voting Rights Act to consider a submission would not commence until the additonal information was received. In this May 19, 1976 letter the Attorney General's office requested information concerning the total population and registered voters by race for each of the Commissioners Precincts both before and after the adoption of the 1973 reapportionment. The County was further advised that if exact statistics were not available estimates should be provided. The County was also requested to supply the Attorney General's office with a map of the County showing the boundaries of the precincts both before and after the reapportionment and was requested to indicate on the map or on a separate map the geographic areas of the County inhabited primarily by persons of Spanish heritage.[5/]

On May 28, 1976, the County Judge responded to

5/ This May 19, 1976 letter will be sometimes referred to as the first request for additional information letter.

the Attorney General's first request for additional information letter referred to above. In this letter, the County Judge responded to each of the requests made by the Attorney General in his additional information letter. First, the County Judge attached to the letter a chart showing the number of registered voters by race and ethnicity for each precinct before and after the reapportionment. Second, he included maps of the City and of the County of Uvalde showing the precinct boundaries and he described in his letter the areas in which the Mexican-American population tended to concentrate. However, with respect to the Attorney Generl's request for exact population figures or estimates of total population, as opposed to the number of registered voters, in each precinct, the County Judge made the following statement:

> "We do not have any way of telling the total population of these districts before and after this change was made."

Such a statement on behalf of the submitting authority was not only appropriate but required by the regula-

tions of the Attorney General. 28 C.F.R. §51.10 (b)(8).

Thus, as of June 1, 1976, the date on which the County Judge's May 28, 1976 letter with enclosures responding to the Attorney General's first request for additional information letter was received, Uvalde County had (1) made the initial submission of the 1973 reapportionment and (2) supplied the Attorney General with all of the information he had requested that was available to the County.

Uvalde County contends that the sixty day period in which the Attorney General had to decide whether or not to object to the submitted reapportionment started on the date the Attorney General's office received the May 28, 1976 letter. Private Plaintiffs and the United States, on the other hand, argue that the sixty day period did not commence at that time because the submission was still incomplete.

On July 30, 1976 the Attorney General's office again advised the Uvalde County Judge that more information was needed to evaluate the submission. In

this second request for additional information letter the Attorney General's office requested information that had not been theretofore requested.[6/] Inexplicably, the County Judge was also asked again to supply the Attorney General's office with population figures by race for each Commissioner Precinct before and after the 1973 reapportionment. The County Judge had already stated, as he was required to do by the regulations, that this information was unavailable.

On August 12, 1976, the County Judge responded to the Attorney General's second request for additional information letter by providing the Attorney General's office with the available requested information. Concerning the request for population figures by race by precinct, the County Judge once again advised the Attorney General's office that the information was simply not available. Thereafter, on October

6/ Because the Attorney General's office was being inundated with submissions during this period, Uvalde County submission was reassigned in mid-course from its original analyst to one who had more experience in Texas reapportionment submissions.

13, 1976, about 205 days after the submission process started, the Assistant Attorney General for the Civil Rights Division of the Department of Justice interposed an objection to Uvalde County's 1973 reapportionment.

Private Plaintiffs and the United States, on whom the burden of proof lies, contend that this October 13 objection was timely and, therefore, they should be granted the declaratiory and injunctive relief they seek. Relying on Georgia vs. United States, 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973), they contend that the Attorney General has "carte blanche" authority to make as many requests for additional information, each time postponing the commencement of the sixty day period, as he deems appropriate. The Defendants, on the other hand, while not strenuously denying the Attorney General the right to make more than one request for additional information, argue that he cannot use the additional information request procedure to postpone more than once the commencement

of the sixty day period. Based on the factual circumstances here, we agree with the Defendants.

As mentioned above, the Attorney General has promulgated regulations establishing procedures for the administration of Section 5 of the Voting Rights Act. 28 C.F.R. §51. Although Section 5 of the Voting Rights Act makes no provision for requests for additional information postponing the start of the sixty day period, the regulations do allow this procedure. 28 C.F.R §51.18. There it is provided as follows:

> "If the submission does not satisfy the requirements of §51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the sixty day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission." 28 C.F.R. §51.18(a).

This subsection of the regulations has been upheld as reasonable and valid. Georgia vs. United States, supra.

Nevertheless, the regulations do not allow repeated requests for additional information to contiue post-

poning the start of the sixty day period once the originally requested information is received. That part of the regulation quoted above makes it clear that when "such information" as is requested is received by the Department of Justice, the sixty day period will commence. Nowhere is it provided that the Attorney General can thereafter request still more information and again postpone the start of the sixty day period. The regulations refer to "the request". This wording is evidence that those drafting the regulations intended that there be only one such request allowing the postponement of the sixty day period.

We think this construction of the regulations is the better one for another reason. The regulations as so read will not tie the hands of the Attorney General during the submission process. He may still request additional information from the submitting authority "at any time during the sixty day period". 28 C.F.R §51.18 (b)(1) (emphasis added). Thus, he can obtain any extra data or clarification he wants

while not unduly lengthening the submission process.

At the hearing of this cause, counsel for the United States argued that the Attorney General should have the right to continue to postpone the start of the sixty day period by requesting additional information as long as it appears that such requests might be fruitful. We do not believe that Congress, by providing in Section 5 of the Voting Rights Act that the Attorney General should make his determination within sixty days of the submission, intended to give the Attorney General such carte blance authority. The congressional intent was assessed recently by the Supreme Court in the following manner:

> "In light of the potential severity of the §5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions. The congressional intent is plain: the extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission. Although there was to be no bar

> to subsequent constitutional challenges to the implemented legislation, there also was to be 'no dragging out' of the extraordinary federal remedy beyond the period specified in the statute." Morris vs. Gressette, ____ U.S. _____, 97 S.Ct. 2411, 2420 (1977).

As mentioned previously, the submission process in the case now before us was "dragged" out by the Attorney General's office over a 205 day period by the employment of the "request for additional information" procedure. As is evident here, this procedure does not result in the "expeditious" remedy intended by Congress.

Our interpretation of the regulations as not allowing serial requests for additional information to continue postponing the start of the sixty day period does not conflict with the decision of the Supreme Court in Georgia vs. Unites States, supra, In Georgia, as previously stated, the Court upheld, under the circumstances presented there, the basis validity of the regulation allowing the Attorney General to postpone the start of the sixty day period until a complete submission was received. The Court stated

that if the Attorney General is not allowed to request additional information he would often be compelled to make his statutory determination on the basis of incomplete and inadequate information. This result, the Court stated, would only add acrimony to the administration of the submission process.

In that case, however, there was only one request for additional information and that request was made within two weeks after the initial submission was received. Here, on the other hand, there were two requests for additional information and each request was made close to the sixtieth day after the receipt of prior correspondence. The request for additional information procedure is designed to avoid acrimony. If allowed to be used in the way it was used here, it would add acrimony. Once the submitting authority complies with the Attorney General's request for additional information the sixty day period commences. The Attorney General may not further postpone the commencement of that period by requesting still more

information or by repeating his request for information which the submitting authority has already stated to be unavailable.

Applying this principle to the case before us we find that the sixty day period commenced on the date that the Attorney General's office received Uvalde County's response to the first request for additional information letter, June 1, 1976, By that day, the Attorney General had been supplied the information he requested in his May 19, 1976 letter except for the population (as opposed to registered voters) information which the County Judge stated was not available. The submission was, therefore, according to the regulations, complete. Since the Attorney General failed to interpose an objection to the 1973 reapportionment within sixty days following June 1, 1976, that reapportionment scheme may be enforced by Uvalde County. The injunctive order heretofore in effect is hereby dissolved and all relief sought by Private Plaintiffs and by the Unites States is denied. The complaints

dismissed.

It is ORDERED.

ORDERED AND ENTERED this 20th day of April, 1978.

THOMAS GIBBS GEE
United States Circuit Court Judge

Dissenting
ADRIAN SPEARS
United States District Judge

JOHN H. WOOD, JR.
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

RICHARD GARCIA, ET AL,	X	
	X	
Plaintiffs	X	
	X	
and	X	
	X	
UNITED STATES OF AMERICA,	X	
	X	
Plaintiff-Intervenor	X	
	X	CIVIL ACTION
vs.	X	NO. DR-76-CA-24
	X	
UVALDE COUNTY, ET AL,	X	
	X	
Defendants	X	
	X	
and	X	
	X	
NORMENT FOLEY AND GENE ILSE,	X	
	X	
Defendant-Intervenors	X	

SPEARS, District Judge, Dissenting:

Although the majority says that this Court can review the circumstances in which the objection letter was issued in order to determine whether or not it was valid and timely (Op.p.2), this proposition of law is not free from doubt. See Morris v. Gressette, 432 U.S. 526, footnote 13, p. 541. Nevertheless, for the purpose of this dissent it will be assumed, but not admitted, that the majority is correct.

While the "seven month submission process" discussed by the majority troubles me considerably, I cannot, in light of the record herein, attribute all of this inordinate delay to the Attorney General. On the contrary, a substantial amount of the blame for the "dragging out" of the process must be shared by the County, and since I am convinced that the July 30, 1976 letter written by the Attorney General to the submitting authority was both appropriate and timely under the circumstances, I must respectfully dissent.

The threshold problem presented by the majority is that of interpreting the regulations published by the Attorney General, 28 U.S.C. §51.01 et.seq., which govern the submission of changes affecting voting to the Justice Department for preclearance. I agree that the spirit of the Act, and the regulations thereunder, call for a construction which would allow the Attorney General a period of sixty days following receipt of a submission to review the material before him and determine from them that either (1) an objection is called for, (2) no objection is called for, or (3) no determination to make or withhold an objection is possible on the basis of the material submitted, and that additional information is needed from the submitting authority. Further, I agree that should the third alternative prove necessary, the Attorney General must request all material he needs within the

initial sixty day period. He may make a series of requests, but all must be made within that time. He is then entitled to wait until all information so requested is received from the submitting authority before the sixty day period in which he must object begins to run.

Applying this construction to the case before us, one must begin with the initial submission by Uvalde County. The letter accompanying the submission dated March 22, 1976, states that the committee charged with formulating a new redistricting plan "used the voter list, the census report, spot map kept by the City of UValde showing the density of utility users and all other information they could receive." The text of the letter specifically states that the redistricting was not accomplished by a prior committee due to an objection lodged by Gilbert Torres, a plaintiff in the present suit, that census data was not considered in the first redistricting plan.

The initial submission letter was received by the Attorney General on March 25, 1976. Within sixty days thereafter, on May 19, 1976, the Attorney General sent a letter requesting additional information. Among the items requested in this letter was the following:

> The total population and number of registered voters by race (white-Anglo, black and Spanish heritage) for each of the precincts in question before and after adoption of the changes. If exact statistics are not available, please provide your best estimates and advise us of the basis for such estimates.

In reply, the County Judge of Uvalde County sent his letter of May 28, 1976, in which he stated:

> We do not have any way of telling the total population of these districts before and after this change was made. We do have, and I am enclosing herewith, a list showing the persons by voter registration.

The next communication between the parties was the July 30, 1976 letter from the Attorney General to the County Judge, wherein the following information was requested:

> Estimates of the total population by race (white-Anglo, Mexican American, and Black) in Uvalde County, as well as population totals by race for each of the Commissioner precincts before and after adoption of the changes. Please indicate the basis for your estimates. In this regard, your correspondence indicates that in the re-apportionment voter registration data as well as population data were taken into account.
>
> Furthermore, the Redistricting Committee, appointed by the Uvalde County Commissioner's [sic] Court, in their report, indicates that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Please advise us of the specific data utilized in your determination. (Emphasis supplied).

At first glance, the July 30 request seems repetitious of the one made in the May 19 letter, to which the County responded that the information sought was simply unavailable. However, if reference is made to the original submission letter and the attachments thereto, it appears that the 1970 census report was in fact used by the Redistricting Committee in its formulation of a plan. The original submission

fails to specify what census information was used or how it was used, and it seems to me that the repeated requests of the Attorney General are directed at this point, as indicated by the wording of the July 30 request, and the deposition testimony of Robert Chavez, a Department of Justice analyst, (Chavez, p. 22, first question - p. 23, third question).

In evaluating a situation such as this, the good faith of the Attorney General and his delegates must be presumed, and inasmuch as the defendants are affirmatively attacking the administration of the Attorney General's procedures, it would appear that it is incumbent upon them to show "unwarranted administrative conduct" resulting in "frivolous and repeated delays by the Justice Department." Georgia v. United States, 411 U.S. 526, footnote 13, p. 541.

I do not believe that the record supports a finding of any such conduct on the part of the Justice Department in this case. As I see it, the Attorney General acted reasonably in writing the July 30th

letter, given the apparent conflict in the information supplied by the submitting authority. The regulations emphasize the value of population statistics in the evaluation of changes in voting practices or procedures which involve redistricting. 28 CFR §51.10 (b)(5) and (6). The requests for such information are certainly supportive of the argument that the Attorney General's office was searching for a basis upon which it might sustain the Uvalde County reapportionment. Each letter requesting additional information contains an offer to aid the submitting authority in complying therewith, an offer the benefits of which the submitting authority in this case failed to avail itself.

The County's letter of May 28, 1976 was received by the Attorney General on June 1, 1976, so the July 30th letter from the Attorney General was timely. The time-table of events demonstrates that on August 12, 1976, the County responded to the Attorney General's letter of July 30, 1976. This response was received

by the Attorney General on August 14, 1976, and he registered his objection within sixty days thereafter, on October 13, 1976. I would, therefore, continue in force the injunctive relief herefore granted, and extend that relief to cover the May 6, 1978 party primaries.

ADRIAN A. SPEARS
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

RICHARD GARCIA, ET AL Plaintiffs	§ § §	
AND UNITED STATES OF AMERICA, Plaintiff-Intervenor	§ § §	
VS.	§ §	CIVIL ACTION DR-76-CA 24
UVALDE COUNTY, ET AL Defendants	§ § §	
AND NORMENT FOLEY AND GENE ILLSE, Defendants-Intervenors	§ § §	

JUDGMENT

Be it remembered that on the 11th day of April, 1978 came on to be heard before this specially constituted Three-Judge Court the complaint of Plaintiffs, Richard Garcia, Et Al and the United States of America, Plaintiff-Intervenor, for declaratory and injunctive relief against Uvalde County Et Al. The Court, having heard the evidence and arguments of counsel, is of the opinion that judgment should be entered for Defendants. It is therefore,

ORDERED, ADJUDGED and DECREED that the injunctive orders heretofore in effect are hereby dissolved; that all other relief sought by Plaintiffs and Plaintiff-Intervenor be and is hereby DENIED; that Defendants be allowed to continue in effect the 1973 reapportionment of Uvalde County's Commissioners' precincts; and all costs of Court be taxed against Plaintiffs and Plaintiff-Intervenor.

SIGNED this the 27th day of April, 1978.

THOMAS GIBBS GEE,
United States Circuit
Court Judge

DISSENTING

ADRIAN SPEARS,
United States District Judge

JOHN H. WOOD, JR.
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RICHARD GARCIA, ET. AL.	X	
	X	
V.	X	DR 76 CA 24
	X	
UVALDE COUNTY, TEXAS ET. AL.	X	

O R D E R

Came on this day for consideration Plaintiffs' Motion for Injunction Pending Appeal. The Court, upon review of the motion and memorandum in support thereof, is of the opinion that the injunctive relief requested therein should be denied.

IT IS SO ORDERED.

Entered this 27th day of April, 1978.

THOMAS GIBBS GEE
United States Circuit Judge

ADRIAN A. SPEARS
United States District Judge

JOHN H. WOOD, JR.
United Stated District Judge

Spears, District Judge, Dissenting:

I would grant the injunctive relief requested.

ADRIAN A. SPEARS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

RICHARD GARCIA, ET AL,	X	
	X	
Plaintiffs	X	
	X	
and	X	
	X	
UNITED STATES OF AMERICA,	X	
	X	
Plaintiff-Intervenor	X	
	X	CIVIL ACTION NO.
VS.	X	DR-76-CA-24
	X	
UVALDE COUNTY, ET AL,	X	
	X	
Defendants	X	
	X	
and	X	
	X	
NORMENT FOLEY and GENE ILSE,	X	
	X	
Defendants-Intervenors	X	

AMENDED ORDER

Came on for consideration by this Court the Motion made by Plaintiffs, Richard Garcia, et al, that the Court reconsider tis April 20, 1978 Memorandum Opinion and Order and its April 27, 1978 Judgment, and, came on for consideration by this Court the Motion made by the

United States of America, Plaintiff-Intervenor, that this Court reconsider and amend its April 27, 1978 Judgment. After considering these Motions and all pleadings, affidavits and memoranda in support thereof, the court is of the opinion that these Motions should be, in all things, denied. It is therefore,

ORDERED, ADJUDGED AND DECREED that the Motion of Plaintiffs and Plaintiff-Intervenor, hereinabove referred to, and the relief requested therein is hereby denied.

ENTERED this 19th day of June, 1978.

THOMAS GIBBS GEE
United States Circuit Judge

ADRIAN A. SPEARS
United States District Judge

JOHN H. WOOD, JR.
United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

RICHARD GARCIA, RAMON VELASQUEZ, AND OLGA RODRIGUEZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED	X	
Plaintiffs,	X	CIVIL ACTION NO. DR-76-CA-24
vs.	X	
UVALDE COUNTY, ET AL.,	X	
Defendants	X	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Plaintiffs, RICHARD GARCIA, RAMON VELASQUEZ, AND OLGA RODRIGUEZ, the Plaintiffs in the above-numbered cause, hereby Appeal to the Supreme Court of The United States from the JUDGMENT OF April 27, 1978, and the ORDER of May 26, 1978.

This Appeal is taken pursuant to Title 28, UNITED STATES CODE, Section 1253 and 42 UNITED STATES CODE 1973 (b).

DATED: JUNE 22, 1978

Respectfully Submitted,

PAUL D. RICH
TEXAS RURAL LEGAL AID, INC.
BOX 707
CRYSTAL CITY, TEXAS 78839
(AC) 512/374-3428

PEDRO G. NIETO
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CRYSTAL CITY, TEXAS 78839

VILMA S. MARTINEZ
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and Educational Fund
501 Petroleum Commerce Building
201 N. St. Mary's Street
San Antonio, Texas 78205

ATTORNEYS FOR PLAINTIFFS

BY: _____
PAUL D. RICH

CERTIFICATE OF SERVICE

I, Paul D. Rich, do certify that on this the 22nd day of June, 1978, true and correct copies of Notice of Appeal To The Supreme Court Of The United States were mailed to the following attorneys of record for the Defendants:

EMMET HARRIS, ESQ.
First State Bank Building
Uvalde, Texas 78801

JEFF DAVIS, ESQ.
REYNOLDS, ALLEN
1100 Milam Building
Houston, Texas 77002

and to:

GRANT COOK, ESQ.
16th Floor
1100 Milam Building
Houston, Texas 77002

for Plaintiffs, United States of America, with proper postage affixed thereto.

PAUL D. RICH

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

DEL RIO DIVISION

RICHARD GARCIA, et al., Plaintiffs, and UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. UVALDE COUNTY, et al., Defendants, and NORMENT FOLEY AND GENE ILSE, Defendants-Intervenors.	X	CIVIL ACTION NO. DR-76-CA-24 MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

The opinion and order of this Court of April 20, 1978, effectuated by the judgment entered on April 27, 1978, denied the relief requested by the United States

and private plaintiffs on the grounds that Section 5 and the Procedures for the Administration of Section 5 require the Attorney General to request all additional information needed within sixty days of the receipt of an initial submission and do not allow the Attorney General to request additional information a second time. As described below, the interpretation given to Section 5 by this Court is contrary to the interpretation given to the Act by the Attorney General, may severely hamper future enforcement of the Voting Rights Act, and may place an unreasonable and unnecessary burden on covered jurisdictions to file lawsuits before the United States District Court for the District of Columbia in order to implement voting changes which are factually complex. Also, it is unclear whether this Court had authority to enter this order in light of Section 14(b) of the Voting Rights Act, 42 U.S.C. 1973 L(b). For these reasons, we ask the Court to reconsider its order and judgment.

We agree that the administrative preclearance option of Section 5 was designed to provide covered jurisdictions with "an expeditious alternative to declaratory judgment actions." (Memorandum Opinion and Order, p. 8, citing Morris v. Gressette, 97 S. Ct. 2411, 2420 (1970)). However, the Affidavit of Gerald W. Jones, Chief of the Voting Section of the Civil Rights Division, demonstrates that the Attorney General has not utilized "serial requests for additional information to continue postponing the start of the sixty day period" (Memorandum Opinion and Order, p. 8), but has, in fact, provided the expedited review intended by Congress. For example, the Attorney General received 5,450 submissions of 14,915 voting changes during the period from January 1, 1976 through March 31, 1978. The Attorney General determined whether to object or not object during sixty days of the initial receipt of more than 5,000 of those submissions. Thus the Attorney General's enforcement of the Act has effectuated the congressional

desire for "an expeditious alternative to a declaratory judgment action."

However, in providing the alternative of administrative preclearance the Congress also intended that the decision of the Attorney General would be made on an adequate factual record and thus the authority to request additional information has been upheld. Georgia v. United States, 411 U.S. 526, 539-41 (1973). There is no evidence indicating that the Attorney General has abused this authority. In reviewing 5,450 submissions of almost 15,000 voting changes since January 1, 1976, the Attorney General has requested additional information on only 404 occasions.

It is true that in some few instances the Attorney General has deemed it necessary to request needed information from submitting authorities on more than one occasion. This need has arisen when the submitting authority has not supplied all of the information requested in the initial request for additional information or when an analysis of the response to the first request for information reveals the necessity for further information to enable the Attorney General to determine whether the voting change is nondiscriminatory in purpose or effect.*/

The affidavit of Mr. Jones demonstrates that the Attorney General has sent more than one request for additional information on only forty-five(45) occassions since January 1, 1976. As might be expected the submissions which result in more than one request for additional information are generally of complex voting

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*/ We note that a question has been raised in the case at bar as to whether the Attorney General actually needed the information requested in the second letter and whether the Attorney General's judgment that the submitting authority had not provided him with all available population data, by race, was a reasonable one. It seems clear, however, that this Court should not substitute its judgment for that of the Attorney General's in such matters. See Morris v. Gressette, 97 S. Ct. 2411 (1977); City of Rome v. United States, C.A. No. 77-0797 (D.D.C., Feb. 22, 1978).

changes. Thus, thirteen (13) of the forty-five (45) submissions involved submission of new apportionment plans. The question of whether a new apportionment plan is racially discriminatory in purpose or effect is, of course, a difficult one */ and a finding of the absence of discriminatory purpose and effect can only be made if adequate information, including population statistics, be race, are available.

The Attorney General's efforts to allow covered jurisdiction full opportunity to sustain their burden of proof, even if the initial request for information does not supply information to establish the nondiscriminatory nature of the voting change, has benefited covered jurisdictions. For example, in twenty-two (22) of the forty-five (45) submissions, where more than one additional information request was sent, the Attorney General ultimately granted Section 5 preclearance. Had it been necessary for the Attorney General to make a final determination on the basis of the response to his initial request for more information in these instances, he would have been required to object to each of these twenty-two (22) submissions, given the burden-of-proof requirements of Section 5.*/ Thus, each of those twenty-two (22)

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*/ Cf. Nevett v. Sides, No. 76-2951 (5th Cir. March 29, 1978); Bolden v. City of Mobile, Nos. 76-4210 and 77-2042 (5th Cir. March 29, 1978); BULL v. City of Shreveport, No. 76-3619 (5th Cir. March 29, 1978); Thomasville Branch of NAACP v. Thomas County, No. 77-1196 (March 29, 1978).

*/ See 28 C.F.R. §51.19. That section of the regulations notes that Section 5

> imposes on the Attorney General what is essentially a judicial function. Therefore, the burden of proof on the submitting authority is the same in submitting changes to the Attorney General as it would be in submitting changes to the District Court for the District of Columbia... If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

jurisdictions would have been required to go through the lengthy process of seeking a declaratory judgment from the United States District Court for the District of Columbia, */ or alternately, to petition the Attorney General to reconsider the objection with the required information, neither of which, in our view, would appear significantly to shorten the preclearance process. Thus, of 5,450 affected submissions since January 1, 1976, the Attorney General's procedures have in only seven (7) objections when more than one request for additional information has been sent.

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*/ For example, on April 20, 1978 the District Court for the District of Columbia denied a request for Section 5 preclearance of a voting change in Wilkes County, Georgia; the lawsuit was initiated on June 6, 1976. Wilkes County v. United States, C.A. Nos. 76-1045 and 76-1046 (D.D.C., April 20, 1978). Another Section 5 lawsuit, involving the reapportionment of Grenada County, Mississippi was initiated on September 1, 1976; a proposed consent decree was recently presented to the Court. Whitfield v. United States, C.A. No. 76-1636 (D.D.C.). A Section 5 preclearance action initiated by the City of Rome Georgia on May 29, 1977 is still pending before the District Court for the District of Columbia. City of Rome v. United States, supra.

Because of these practical results of the Attorney General's enforcement program, we do not believe that the Court, even assuming its jurisdiction to do so, should undertake to alter the Attorney General's method of enforcing Section 5. The alteration which would be required by this Court's judgment of April 27, 1978, would impose a significant additional burden on covered jurisdictions in spite of the Court's apparent intention to expedite the review process. We believe that the result of the implementation of its order will likely be a much more lengthy review process before the District Court for the District of Columbia.

As has been noted many times, the Office of the Attorney General was extensively involved in the drafting of the Voting Rights Act and, of course, promulgated the Procedures for the Administration of Section 5. "In recognition of the Attorney General's key role in the formulation of the Act, [the Supreme] Court in the past has given great deference to his interpretations of it."

United States v. Board of Commissioners of Sheffield, Alabama, 46 U.S.L.W. 4189, 4195 (U.S. March 6, 1978). See also, Perkins v. Matthews, 400 U.S. 379, 390-94 (1971). The Attorney General has enforced the Act in a workable and reasonable manner and, on this record, there appears to be no reason for altering that enforcement program.

An additional basis for reconsidering the judgment of April 27, 1978, is that this Court may lack authority to alter the Attorney General's enforcement of the Voting Rights Act even to the extent that the Court's order would do so. Section 14(b) of the Act, 42 U.S.C. 1973L(b) provides in pertinent part:

> No court other than the District Court for the District of Columbia... shall have jurisdiction to issue... any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any federal officer or employee pursuant hereto.

In light of this provision it may be required that the defendants in this action, if they seek to challenge the procedures followed by the Attorney General, raise that challenge in an action before the District Court for the District of Columbia.

We recognize that at the time of trial the Court did not have before it the statistics demonstrating the extent to which the office of the Attorney General has utilized its authority to request additional information; we also recognized that the parties have not previously briefed the relevance of Section 14(b) of the Act. We, therefore, ask the Court for sufficient additional time to brief these issues and provide the Court with an adequate basis upon which to make a reasoned determination.

Respectfully submitted,

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